In the High Court of Uttaranchal, at Nainital.

A.O. No. 560/2005

National Insurance Company Limited
Through its Divisional Manager,
Divisional Office 5/222, Canal Road,
Tikonia, Haldwani, District Nainital ---- Appellant.

Versus

1- Smt. Neema W/o late Vishwanath Shukla
R/o Village Rudrapur, P.O. Guptakashi
Tehsil Ukhimath District Rudraprayag.

2- Sushil Kumar Dhyani S/o Late Sita Ram Dhyani
owner of Vehicle No. U.P. 06-3973,
R/o Talla Kashirampur, P.O. Kotdwar,
District Pauri Garhwal ….. Respondents.

Sri B.K. Gupta, learned counsel for the appellant.
Sri Pankaj Purohit, , learned counsel for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 17-5-2006

This Appeal from Order, U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 23-8-2005, passed by the M.A.C.T./District Judge, Rudraprayag in M.A.C.P. No. 5 of 2005, whereby the claimants were awarded a compensation of Rs. 4,50,000/- along with 10% interest per annum against the National Insurance Company.

2- Brief facts of the case giving rise to this appeal are that on 31-7-2004,Vishwanath Shukla was going Rishikesh from Srinagar riding in a bus bearing registration No. U.P. 06-3973 and when at about 11:30 a.m. the bus reached near Maldhaiya Ufalda on Srinagar-Rishikesh Motor Marg, it fell in the deep ditch and submerged in the Alaknanda river. Vishwanath Shukla also died in the accident and his dead body could not be found due to flow of water in the river. It was alleged that the accident occurred due to rash and negligent driving of the driver of offending bus. The claimants also alleged that at the time of accident the deceased

Vishwanath Shukla was aged about 43 years and he was posted as Principal in Saraswati Sishu Mandir, Chaukisain, District Pauri Garhwal. He was getting Rs. 3,290/- per month as salary. It was also alleged that the deceased has left behind him his mother, widow, two daughters and a son, who were dependents on the deceased. The claimants have filed the claim petition for award of compensation to the tune of Rs. 12,00,000/-.

3- The O.P. No.1/appellant, who is the insurer of the offending bus, has filed its written statement stating therein that the driver of the offending bus was not having valid driving licence at the time of the accident. It was also alleged that the claim petition was filed in collusion with the owner of the bus. Exorbitant amount of compensation has been claimed. Hence the Insurance Company claimed that it has no liability to pay the compensation.

4- O.P./respondent No. 2 contested the claim petition by filing his written statement. He alleged that the real owner of the offending bus was his father, who also died in this accident. He also alleged that at the time of accident the bus was insured with the National Insurance Company and its driver was having valid driving licence. It was also pleaded that the vehicle in question was not being driven rashly and negligent. He also asserted that due to the accident the vehicle had submerged in the river, hence all the papers regarding ownership, insurance etc of the bus were also destroyed in the river water. It was also alleged that the real owner of the bus had also died in the accident, the O.P./respondent No.2 was doing his separate business hence he had no any connection with the offending bus and he is not liable to pay compensation.

5- The Tribunal on the pleadings of parties framed relevant issues. The claimants in support to their claim examined Smt. Neema Devi as P.W.1, and Shiv Nath Shukla as P.W.2 and also filed some documents. The O.P./respondent No.2 also examined himself as D.W.1 and filed some documents. The Insurance Company did not adduce any evidence.

6- The Tribunal having heard the learned counsel for the parties and perusing the evidence on record allowed the claim petition and awarded Rs. 4,50,000/- as compensation to the claimants along

with 10% interest per annum against the insurer of the offending bus.

7. Feeling aggrieved, the National Insurance Company has filed this appeal.

8- Heard the learned counsel for the parties and perused the record.

9- The sole question for determination in this appeal is whether the Tribunal has committed any illegality by not deducting the 1/3rd amount from the income of the deceased.

10- As far as the merit of the case is concerned, it is quite clear from the perusal of record that the offending bus No. U.P. 06-3973 was being driven rashly and negligently at the time of the accident and Vishwanath Shukla who was travelling in the said bus has succumbed to the injuries on account of this accident. It is also clear from the evidence that the bus fell in a Khad and on account of this the deceased fell in the river and his dead body could not be recovered. From the evidence available on record it is quite clear that the bus in question was being driven rashly and negligently at the time of the accident.

11- As far as the calculation of amount of compensation is concerned, the evidence reveals that the deceased was aged about 43 years at the time of the accident and he was working as a principal in a primary school. The deceased was getting Rs. 3290/- salary per month as is evident from the record. The Tribunal has adopted the multiplier of 14 in view of the Schedule given U/S 163-A of the Motor Vehicles, Act 1988 and after adopting this multiplier the total amount of compensation had come Rs. 5, 52,720/-. The Tribunal thereafter instead of deducting 1/3rd amount, which would have been incurred against personal expenses of the deceased, if he would have survived, has deducted 1/5th and then awarded a total amount of Rs. 4,50,000/- as compensation in favour of the claimants. The main attack of the insurance company is that this finding of the Tribunal is perverse and the Tribunal would have deducted 1/3rd from the total amount of compensation instead of 1/5th.

12- We fail to appreciate the submission advanced by the

learned counsel for the insurance company. It is not disputed that the deceased was a teacher and he had a responsibility of four children as well as his wife and his mother. The deceased was a low paid salaried person therefore keeping in view these circumstances the amount of compensation awarded appears to be reasonable and proportionate to the loss resulting from the death of the deceased. The deceased was 43 years of age at the time of accident. Even when the government servant retires he has to keep the pot boiling and carry on work, till he is healthy, to look-after his family. Apart from this, in cases of low income persons, as of deceased with more number of dependents, reasonable and proportionate deduction for personal expenses should be made in computing the family dependency and justice should be done to the dependents who have lost their sole bread-earner of the family. The claim petition was filed by the claimants before the Tribunal U/S 166 of the Motor Vehicles Act. Had the claim petition been U/S 163-A then certainly the deduction less than 1/3rd could not have been made by the Tribunal but since the instant claim petition was U/S 166 of the Motor Vehicles Act, hence the Tribunal has deducted a just, reasonable and proportionate deduction for personal expenses of the deceased in computing the family dependency. We do not find any illegality or infirmity in the impugned judgment and award passed by the Tribunal. The Tribunal has rightly deducted 1/5th amount from the total amount of compensation and the same needs no interference in this appeal.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and award dated 23-8-2005, passed by the M.A.C.T./District Judge, Rudraprayag in M.A.C.P. No. 5 of 2005, is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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